

Transcript of the Testimony of
TERRY DAW

1

Date: November 14, 2005

Case No.: 04-00204 DAE KSC

Case: ALOHA SPORTS v. THE NATIONAL COLLEGIATE

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EXHIBIT " 55 "

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ALOHA SPORTS INC., a Hawaii)	CIVIL NO. CV04-000204 DAE/KSC
)	
Plaintiff,)	
)	
vs.)	
)	
THE NATIONAL COLLEGIATE)	MORNING SESSION
ATHLETIC ASSOCIATION, an)	VOLUME I
unincorporated association,)	PAGES 1 THROUGH 120
)	
Defendant.)	
)	
)	

VIDEOTAPED DEPOSITION OF TERRY DAW

Taken on behalf of Defendant at the law offices of
McCorriston Miller Mukai MacKinnon LLP, Five Waterfront
Plaza, 4th Floor, 500 Ala Moana Boulevard, Honolulu,
Hawaii 96813, commencing at 9:21 a.m., on Monday, November
14, 2005, pursuant to Notice.

BEFORE:

Donna Kohls, CSR 146
Notary Public, State of Hawaii

1 APPEARANCES:

2 For Plaintiff: DAVID W. KESSELMAN, ESQ.
3 COURTNEY PALKO, ESQ.
4 Blecher & Collins, P.C.
5 611 W. Sixth Street, 20th Floor
6 Los Angeles, California 90017-3120

7 and

8 FREDERICK W. ROHLFING, ESQ.
9 Case Bigelow & Lombardi
10 2600 Mauka Tower
11 737 Bishop Street
12 Honolulu, Hawaii 96813

13 For Defendant: GREGORY L. CURTNER, ESQ.
14 ATLEEN KAUR, ESQ.
15 Miller Canfield Paddock & Stone, P.L.C.
16 101 North Main Street, 7th Floor
17 Ann Arbor, Michigan 48104-1400
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24
25

1 TERRY DAW

2 called as a witness by and on behalf of Defendant, being
3 first duly sworn to tell the truth, the whole truth, and
4 nothing but the truth, was examined and testified as
5 follows:

6 MR. CURTNER: I should state for the record that
7 with me at counsel table is Atleen Kaur from my firm.

8 EXAMINATION

9 BY MR. CURTNER:

10 Q Good morning, Mr. Daw. Could you state your full
11 name, please.

12 A Terry Leroy Daw.

13 Q Where do you live, sir?

14 A I live in Kailua Kona, Hawaii.

15 Q How long have you lived there?

16 A Two years.

17 Q What is your address?

18 A 75-111 Halahua Place, Kailua Kona, Hawaii 96740.

19 Q You understand that you are here today, sir, to give
20 a deposition in the matter of Aloha Sports versus the
21 National Collegiate Association?

22 A I do.

23 Q You understand you have been designated by the
24 Plaintiff, Aloha Sports, Inc., as its representative
25 pursuant to the Federal Rules of Civil Procedure,

1 Q I mean, was that something you handled or Mr.
2 Rohlfing handled or you both handled or did it change?

3 A We had meetings with the conferences immediately
4 after the first game. Before the first game, I don't
5 think I had too many conversations with the conferences.
6 But after that first year, we went and met with them and
7 got to know them a little better.

8 Q Were you involved in the decision to move the two
9 bowls to the mainland?

10 A I was.

11 Q Was that something you were in favor of?

12 A It was.

13 Q And if I understand correctly, you were in favor of
14 that because you thought you could improve attendance and
15 that would allow you to attract higher quality teams by
16 paying them more, is that correct?

17 A Yes. And we thought we would be closer to a fan base
18 so it would be easier for the fans to attend the games.

19 We had contracts with the Pac 10 and we wanted to try and
20 locate one of the bowl games within their jurisdiction.

21 In fact, we wanted to locate both of them at that time,
22 one in San Francisco and one in Seattle, Washington.

23 Q Was the Pac 10 urging you to move the bowls?

24 A No.

25 Q Did you discuss that with Mr. Hanson?

1 to play in the game. So I assume they were in favor of it
2 or they wouldn't have supplied us with a game.

3 Q Did he say anything about the move itself as opposed
4 to supplying a team?

5 A They enjoyed Hawaii, he did tell me that. I remember
6 him telling me that. And I remember him telling me that
7 he thought Seattle was a great city.

8 Q Was the contract with the ACC entered into before the
9 move or after the move?

10 A Both.

11 Q So there was a preexisting contract and then you
12 modified it, is that correct?

13 A Uh-huh.

14 Q You also dealt with the Mountain West Conference
15 during that time period, is that right?

16 A We dealt with the Mountain West during-- we started
17 talks with the Mountain West when we were moving the game
18 to San Francisco. No, I take that back. We started
19 discussing that with them after the first game in
20 Seattle. We came to an agreement that they would supply
21 us with a team for the second game in Seattle.

22 Q But if I understand correctly, they couldn't supply a
23 bowl eligible team, right?

24 A That's correct.

25 Q But they had already given you an advance deposit of

1 250,000, correct?

2 A That's correct.

3 Q And you never refunded their deposit, correct?

4 A No, we did not, that's correct.

5 Q And they sued you and have a judgment outstanding for
6 250,000 plus interest and costs, correct?

7 A They do.

8 MR. CURTNER: Let's mark this as the next,
9 please,

10 (Exhibit 2 marked for identification.)

11 THE WITNESS: What do I do with the first
12 exhibit?

13 Q (By Mr. Curtner) Put them up upside down in the
14 center of the table and then they will end up in order.

15 A Good.

16 Q Mr. Daw, Exhibit 2 is a copy of the First Amended
17 Complaint filed in this lawsuit. Are you familiar with
18 this document?

19 A I am.

20 Q Did you authorize it to be filed?

21 A I did.

22 Q Did you review it before it was filed?

23 A I did.

24 MR. KESSELMAN: I don't want to get into any
25 privileged discussions he has had with counsel about the

1 with potential sponsors?

2 A Yes.

3 Q And did you have experience in trying to find
4 sponsors for the games over the years you were involved?

5 A No.

6 Q So that was something handled by Mr. Rohlfing?

7 A Well, depends on what time frame we are talking about
8 when you ask me that question. When I originally started,
9 I had no experience. But I gained experience rapidly.

10 After that point in time, once I became involved, every
11 new contact was a new experience.

12 Q So you did gain experience and you did have activity
13 in trying to find sponsors?

14 A I did.

15 Q Did you find that to be a competitive activity in the
16 sense there were lots of people trying to find sponsors?

17 A Oh, sure.

18 Q Against whom-- who were the other people trying to
19 find the same sponsors that you were trying to find?

20 A Every business in America. I mean, that is what
21 happens, right?

22 Q Did you find that there were other sporting events
23 trying to find the same sponsors that you were trying to
24 find?

25 A Sure.

1 Q Were there non sporting events trying to solicit the
2 same sponsors?

3 A I can only answer that in a general sense, in that
4 the advertising dollars that are spent, which is what
5 sponsors are doing, are competitively, you know, sent out
6 across the country. Advertising agencies and so forth are
7 all involved in trying to obtain those dollars.

8 Q So you base that on your experience in trying to find
9 sponsors in connection with this business?

10 A Yeah.

11 Q Did you have experience in connection with Aloha
12 Sports in dealing with TV networks about rights fees and
13 their willingness to broadcast your events?

14 A I did.

15 Q And I gather you dealt with ESPN, ABC and maybe
16 others?

17 A I did.

18 Q Who else did you deal with besides those two?

19 A We talked to Fox Sports.

20 Q Anybody else?

21 A No.

22 Q And I gather you talked to Fox after ABC and ESPN
23 said they weren't interested in the San Francisco Bowl?

24 A They never told us they were not interested.

25 Q Well, you did have a dispute with ABC and ESPN about

1 Q But what did you consider to be the fans' alternate
2 choices besides buying a ticket to your game, if anything?

3 MR. KESSELMAN: Lacks foundation.

4 Q (By Mr. Curtner) You can answer, if you can, sir.

5 MR. KESSELMAN: I'm making an objection for the
6 record. Unless I instruct you not to answer, if you have
7 an understanding, you can give him your understanding

8 THE WITNESS: Okay. Would you repeat the
9 question?

10 MR. CURTNER: Sure. Would you read it back,
11 please.

12 (The preceding question was read back.)

13 THE WITNESS: Well, there were other kinds of
14 events around town that they had choices that they could
15 make. They could go to the NBA basketball game. They
16 could go to a college basketball game, movies. There's so
17 many entertainment dollars, they are going to spend them
18 somewhere.

19 Q (By Mr. Curtner) When you were deciding what price
20 to charge for your tickets, how did you go about making
21 that decision?

22 A Fritz and I talked about it and decided that \$50 was
23 the number that we wanted to charge. And we offered some
24 tickets at other prices, as well. But the premium seats
25 would be \$50. And in the last year, some of the premium

1 seats were a hundred dollars.

2 Q Did you consider what other kinds of events were
3 charging for tickets when you made that decision?

4 A Yeah. We talked with a ticket master a little bit
5 about it and we talked with our staff. We talked with the
6 Chamber of Commerce. We talked with-- that's basically
7 it. We had been charging \$50 for those tickets for a
8 number of years.

9 Q So you looked at other kinds of sporting events,
10 including pro events, other kinds of entertainment events
11 in the same geographic area and what they were going for?

12 A Sure.

13 Q And that is the information you gathered from ticket
14 master and the Chamber?

15 A The Chamber was more just general how they felt about
16 it. The ticket master talked-- we also looked at-- you
17 pretty much know when you are in the bowl business what
18 other bowls are charging, how they distribute their
19 tickets. There's always a question of whether or not you
20 are charging too much or too little.

21 Q Would you look at page six of the Complaint, please.

22 A Okay.

23 Q In paragraph ten, there is a reference to the NCAA
24 Division 1 Manual, Constitution, Operating Bylaws,
25 Administrative Bylaws and, two, the Postseason Football

1 Q Were there any other NCAA documents that you relied
2 on or felt you needed to be familiar with in order to be
3 in the bowl business besides the Manual, which includes
4 the Constitution and the Bylaws and the Handbook?

5 A No.

6 Q Would you look at the next paragraph of the
7 Complaint, please, paragraph 11. It says that the
8 Handbook, and I'm paraphrasing, required that agencies pay
9 a certain minimum. Do you see that?

10 A I do see that.

11 Q Is it accurate, sir, that from the time you moved the
12 bowls to the mainland, that Aloha Sports always proposed
13 to pay or agreed to pay more than the maximum?

14 MR. KESSELMAN: More than the maximum?

15 MR. CURTNER: The minimum. Thank you.

16 THE WITNESS: Would you restate that question?

17 Q (By Mr. Curtner) Sure. In other words, the minimum
18 at that time was 750,000, but you, in fact, agreed and
19 proposed to pay to the teams one million dollars per team
20 in Seattle?

21 A Not every year in Seattle, no.

22 Q Wasn't that true in '01 and in '02?

23 A No.

24 Q Just in '02?

25 A Yes.

1 Q But, in fact, one of your reasons for moving to the
2 mainland was so that you could offer and pay more,
3 correct?

4 A Yes, I would say.

5 Q It's accurate, is it not, sir, that the Handbook does
6 not regulate the number or the price of the tickets that
7 you require the teams to buy as a condition of their
8 participation in the bowl?

9 MR. KESSELMAN: The document would speak for
10 itself on that subject matter. It's the Best Evidence
11 Rule.

12 MR. CURTNER: His understanding is pertinent.

13 MR. KESSELMAN: That is a different question.

14 THE WITNESS: Am I supposed to answer the
15 question?

16 Q (By Mr. Curtner) Yes.

17 A Okay. There are parts of the NCAA Handbook that
18 restrict what you can sell tickets for.

19 Q My question was the number and price at which you
20 sell the tickets to the teams.

21 A No, there is no restrictions to that. I take it
22 back. There is a restriction to that.

23 Q What is that, as you understand?

24 A We have to sell a certain percentage of the tickets
25 in the stadium. We can only require them to buy a certain

1 teams themselves.

2 Q Do you know how many bowl games there were in 2000?

3 A I don't remember.

4 Q Do you know how many there were in 2001?

5 A I don't know the exact amounts. Twenty-eight or
6 something like that.

7 Q What about 2002?

8 A About the same.

9 Q So if I told you it was 23, 25 and 25 for those three
10 years, would that sound right to you or not?

11 A No.

12 Q You thought it was higher?

13 A Yes.

14 Q Did you ever ask the NCAA to waive any of its rules
15 as expressed in the Handbooks?

16 A We asked for an extension of time on the letter of
17 credit.

18 Q And they gave you several extensions on that, right?

19 A They did.

20 Q Did you ever ask for any other waivers?

21 A Not that I can recall.

22 Q When the San Francisco Bowl was not held, you were
23 aware that that meant that you lost your certification,
24 correct?

25 A That would be incorrect.

1 comply with Bylaw 30.9, the requirement for an audited
2 financial report for the immediate past game, or the
3 NCAA's approved policies and procedures, the subcommittee
4 has the option to withhold certification for the
5 postseason bowl game for one year or fine it a percentage
6 of its gross receipts, not to exceed 50 percent, from the
7 contest involved in the noncompliance, with the amount to
8 be determined by it and approved by the Division 1
9 Championships/Competition Cabinet."

10 Q And so you understood that the subcommittee had the
11 option to withhold certification for the postseason bowl
12 game for one year, right, if there was noncompliance, in
13 its view?

14 A Yeah.

15 Q And you were aware that that language was in the
16 Handbook every year?

17 MR. KESSELMAN: That may lack foundation.

18 THE WITNESS: I assumed that it was.

19 Q (By Mr. Curtner) Do you know?

20 A I think it was.

21 Q Continuing with this same one, would you look at page
22 29, sir, the Initial Bowl Certification.

23 A Yes.

24 Q You were aware, were you not, that a proposal for a
25 new bowl certification had a one-year waiting period at

1 not at a deposition.

2 MR. KESSELMAN: We can debate that.

3 MR. CURTNER: No, we can't. Actually the
4 Federal Rules are pretty clear on that. The only
5 objections that are to be made at depositions are those
6 that can go to the form of the question so that the
7 question can be rephrased. The others are all preserved.

8 MR. KESSELMAN: That's fine. But it still
9 serves its purposes in showing documents to the client.
10 But in any event, we'll move forward.

11 Q (By Mr. Curtner) Exhibit 3, sir, is the Handbook for
12 the 2002-2003 year, correct?

13 A Is this Exhibit 3? Yes, it is.

14 Q And this was something you were familiar with at the
15 time?

16 A Yes.

17 Q Would you look at page 33.

18 A Sure.

19 Q Okay. You see it says New Certification Criteria for
20 the '03, '04 NCAA Postseason Games?

21 A Uh-huh.

22 Q So you were aware that there were new criteria in
23 effect as of that time?

24 A I don't know if I was aware of this or not.

25 Q Will you confirm for me on page 38 that the language

1 relating to penalties is exactly the same as it was in the
2 prior Handbook, at least that first sentence that you read
3 into the record is the same as it was in the prior period.

4 A It appears to be.

5 Q Would you look at page 12 of that document, please.

6 A Of the 2003-2004?

7 Q Yes.

8 MS. KAUR: 2003-2004?

9 MR. CURTNER: '02, '03.

10 Q (By Mr. Curtner) That is the one in front of you.

11 A What page am I looking for, again?

12 Q 12.

13 A All right.

14 Q You see under the heading Minimum Guarantee, which
15 has the minimum 750,000 or 75 percent language?

16 A Yes.

17 Q The last sentence there reads, "A waiver of this
18 provision may be granted to a closed game."

19 A I do see that.

20 Q I did read it correctly, right?

21 A It says, "A waiver of this provision may be granted
22 to a closed game."

23 Q And applies to the minimum guarantee, right?

24 MR. KESSELMAN: You can ask him his
25 understanding of how it would apply.

1 Q (By Mr. Curtner) It's in the same paragraph,
2 correct?

3 A Actually not.

4 Q I'm sorry. I didn't hear your answer.

5 A I said, I don't know if it's in the same paragraph or
6 not.

7 Q It's in the same heading. It's under the heading
8 Minimum Guarantee?

9 A Yes. Let me read this. Okay?

10 Q Sure.

11 A Yes, it does say that.

12 Q Did you ever seek such a waiver?

13 A We did not.

14 Q Did you ever make inquiry of the NCAA about that
15 waiver?

16 A No. At the time we were doing this, we had long term
17 agreements and this would not have come into effect until
18 our next negotiation. So this had no effect on us
19 whatsoever, the waiver portion of that. We were still
20 bound by the old rules because our contracts were also a
21 part of the old discussions.

22 Q When you say-- I'm sorry. Go ahead.

23 A Any waiver of this, we couldn't have waived it if we
24 would have wanted to waive it at this point in time. Now,
25 come a new negotiation, we could have asked the NCAA for

1 some consideration. But at the time we were involved in
2 the bowl games, this wouldn't have been a factor at all.

3 Q So the long-term contracts you are talking about are
4 the contracts with the conferences?

5 A That's correct.

6 Q So you are saying the contracts with the conferences
7 were what you were governed by as opposed to this rule in
8 the Handbook?

9 A No. I'm saying we are governed by both. You enter
10 into agreements that exceed one year, and these are all
11 one year agreements. So anything that they change in this
12 agreement you really can't do anything about until after
13 your contract is expired that you have also entered in
14 with the conference for a dollar amount. Under the old
15 agreement, we were required to pay the 750,000 and there
16 wasn't an exception. So we were required to pay that
17 amount, period.

18 Q It's your understanding, sir, that this waiver
19 language didn't exist in prior years?

20 A I would have to read through it. You would have to
21 refresh my memory if it does.

22 Q So you don't really know, do you?

23 A Not as we sit here, no.

24 Q Would you look at the version of the Handbook that is
25 attached to your Complaint on page 10.

1 and with-- his name slips my mind. He was in charge of
2 the football portion of the NCAA's football division.

3 Q Keith Martin?

4 A Keith Martin, yes.

5 Q Did you discuss this subject--

6 A We discussed the minimum payouts and how much the
7 teams had to receive and so forth and so on. And in all
8 those discussions, there was never an indication they were
9 willing to deal or negotiate on those issues at all.

10 Would have they, I guess we don't know because we
11 didn't ask.

12 Q So you never raised it and your recollection is they
13 never raised it?

14 A We never officially asked them for waiver, if that is
15 what you are asking me.

16 Q You never even asked how one goes about it or how it
17 works?

18 A No, I never did.

19 Q Do you know whether any other bowls ever got waivers?

20 A I do not.

21 Q Of any portions of the rules?

22 A I do not.

23 Q Did you make it your business when you were involved
24 on behalf of ASI, Mr. Daw, to review the minutes of the
25 Certification Subcommittee of the NCAA?

1 legitimately charged the teams for, right?

2 A I couldn't charge the teams anything that the teams
3 didn't agree to buy. So it wasn't something I could
4 charge the teams just because I wanted to charge them.

5 Q Right. But if the--

6 A They wouldn't pay, either.

7 Q -- operator and the team agreed, they could agree to
8 buy tickets equal to the \$750,000, right?

9 A As long as we thought we could sell tickets for the
10 same amount, I guess.

11 Q And, in fact, for the Seattle Bowl, Wake Forest and
12 Oregon were each obligated to buy \$662,000 worth of
13 tickets, correct, against the minimum of 750,000?

14 A No, that is incorrect.

15 Q The rule minimum was 750, although your contract
16 called for one million, right?

17 A That is also incorrect.

18 Q How is that incorrect?

19 A Because we have all kinds of things that play into
20 what we pay versus just the minimum payment that you are
21 talking about. The minimum payment is not really a
22 payment in terms of it guarantees that teams will get a
23 certain amount of money, but it also does not restrict
24 them from receiving more. They can receive basically an
25 unlimited amount of money.

1 Q But sticking with my question, for the year that
2 Oregon and Wake Forest played in the Seattle Bowl, they
3 were each contractually obligated to buy \$662,000 worth of
4 tickets, correct?

5 A I'm not familiar with the total number amount. But
6 if that is what it says in the contract, I would agree
7 with it.

8 Q And, in fact, when you settled up with them, you
9 offset \$662,000 against the payment, right?

10 A We paid them one million dollars per team. They took
11 as portion of their payment tickets, and what they did
12 with those tickets I don't know. But I know that they
13 sold a lot of tickets and they had the ability to sell as
14 many tickets as we sold.

15 Q But you gave them tickets, you didn't give them cash?

16 A We gave them both.

17 Q But for the 662, you gave them tickets. On top of
18 that, you gave them cash?

19 A If that is the number in the contract, yes.

20 Q We have a document that shows that. In fact, you
21 didn't pay them all of what you had contractually promised
22 to pay them for that year, correct?

23 A We didn't at the time we were decertified. However,
24 provisions were made for them to receive their money.

25 Q In fact, they were not paid, correct, and they still

1 doing it.

2 Q My question was simply whether you discussed it with
3 the committee on that occasion?

4 A No. We did in our application. This is-- you are
5 stretching my memory here. But I think in our application
6 we did talk about affiliating ourselves with the WAC and
7 having the University of Hawaii play in the game. And
8 ultimately, if you have the University of Hawaii play in
9 the game, it's a hometown team and you will sell your
10 tickets.

11 Q Unfortunately, for you, Hawaii was eligible the year
12 you weren't there and wasn't eligible thereafter, right?

13 A Well, it wouldn't have made any difference because we
14 wouldn't have been able to have them in our game anyway.

15 Q Why?

16 A Because we have long-term agreements with the Pac 10,
17 ACC, the Big East and so forth. So they wouldn't have
18 been able to play-- in fact, it would have been worse for
19 us because then the fans would have even been madder.

20 Q They would have been even madder at you, wouldn't
21 they?

22 A Right. So that may not have been the best situation
23 even then. But the point is, you would never know until
24 the very last second. With the BCS in its place, that is
25 the nature of the beast now.

1 Q So the difference between when you left Hawaii and
2 when you tried to bring one game back to Hawaii was that
3 you had an agreement with the WAC, is that right?

4 A What Carl Benson told us-- an agreement would be
5 overstating what we had. What we had was an agreement
6 with Carl Benson that if they did not certify the ESPN
7 game, then we in fact would have an agreement.

8 Q So you didn't actually have a conference tie-in. You
9 just had an understanding that you might get one if
10 somebody else didn't get the certification?

11 A Well--

12 Q Is that correct?

13 A That would be correct.

14 Q Thank you. Could you look at page nine of the
15 Complaint, please.

16 A Yes.

17 Q It says, in the middle of the page, in paragraph 15,
18 "ABC required that the games be split in 2000." Do you
19 see that?

20 A Let me get my glasses on and maybe I can. Yes, I do
21 see that.

22 Q Now, is that statement accurate or not?

23 A That depends.

24 Q On what?

25 A Well, bowl games are complicated, number one. They

1 Q Did they sue you? I saw some draft press releases
2 relating to lawsuits by ABC and ESPN.

3 A I don't know. I can't remember whether it was
4 formally filed or not, but they were certainly threatening
5 to sue us.

6 Q Over this subject?

7 A Over this subject.

8 Q In other words, their position, if I understand
9 correctly, was that you were obligated to hold the games
10 in Hawaii on Christmas?

11 MR. KESSELMAN: He, meaning his understanding of
12 their position?

13 THE WITNESS: I can give you my understanding,
14 that's correct. ABC was willing to broadcast the game if
15 we did one thing and one thing only, and that is if we
16 held it on Christmas Day. Even if it was in San
17 Francisco, they were willing to do it.

18 But I was unwilling to hold another game on Christmas
19 Day. The risk for a Christmas Day game far exceeded the
20 amount of money that ABC was willing to compensate you to
21 play on that date.

22 Q (By Mr. Curtner) So ABC wanted it on a particular
23 day, mainly Christmas, and they had a contract that
24 allowed them to insist on that, correct?

25 MR. KESSELMAN: May call for legal conclusion.

1 THE WITNESS: I don't know if they had a
2 contract or not.

3 Q (By Mr. Curtner) So you don't know? That's what the
4 contract said, as you understood it, right?

5 MR. KESSELMAN: Same objection.

6 THE WITNESS: As I understood the contract, they
7 were trying to impose terms that made it impossible for us
8 to comply with.

9 Q (By Mr. Curtner) And your concern was, although it
10 might get good TV audience and ratings, which was good for
11 ABC, it wouldn't get very good attendance, which was bad
12 for you?

13 A That is correct. And even in Hawaii, we wanted to
14 move the game off Christmas Day desperately and could
15 never get them to do that either. So it was a very
16 difficult thing. We knew ABC's position. We knew how it
17 would affect our ticket sales and so we took a very
18 aggressive position against that.

19 The NCAA actually supported us in that decision
20 because they voted to recertify the game in Seattle
21 without and even over the objections of the ESPN. And
22 they also did it for San Francisco, knowing that this was
23 all in place at the time.

24 So at the time we certified the games, ABC and ESPN
25 had both notified the NCAA by letter that, if they did so,

1 Q We haven't seen such a letter. Do you remember
2 getting one?

3 A I don't remember getting the letter. But again, I
4 was reading a lot of documents at the time.

5 Q Can you tell me who on behalf of the shareholders
6 told you they agreed to that?

7 A Not with any degree of certainty.

8 Q So you don't remember?

9 A I don't. I talked with-- I talked to Brian DiMartino
10 and I talked with Dick Schaller. Those are the basic
11 people I talked with.

12 Q Did Mr. Klompus ever tell you that he would sell for
13 that amount?

14 A I didn't have discussions with Mr. Klompus. Their
15 group representative did tell us-- Paul Feller I know told
16 me that he had a letter stating that in fact he had that
17 done. It was my understanding at the time that that was
18 the case.

19 Q Did you have dealings after you became involved with
20 Jeep or Chrysler, Daimler Chrysler, I guess it became,
21 about their sponsorship relationship with the bowls?

22 A Yes.

23 Q What was-- were you involved in the discussions with
24 them when they objected to you moving the bowls to the
25 mainland?

1 A Yes, to some degree.

2 Q With whom did you deal?

3 A It don't-- I can't remember, to be honest. There was
4 a new ad agency we were told that took over and she was
5 going to change her target market. If I remember right,
6 she was going after women, and she didn't think our
7 audience met her criteria anymore.

8 Q So they objected to the move to the mainland and
9 ended their sponsorship, correct?

10 A I don't know if they objected to the move to the
11 mainland as much as they wanted-- the sponsorship had
12 changed since the sponsorship we had with Jeep, and they
13 saw it as a method of ending their sponsorship.

14 Q But in any event, they said although there was a
15 contract for the sponsorship to continue for several years
16 further, that they would not continue it?

17 A Yes, because we were no longer going to be on
18 Christmas Day in Honolulu, Hawaii. But we were told that
19 the new ad agency thought that they could spend their ad
20 dollars better in response after a different market.

21 Q Who told you that?

22 A Someone in the Jeep organization, but I can't give
23 you a name because I don't know.

24 Q Did you get copies of the minutes of the football
25 subcommittee or certification subcommittee identifying

1 I, TERRY DAW, do hereby certify that I have read the
2 foregoing typewritten pages 1 through 118, inclusive, and
3 corrections, if any, were noted by me; and that same is
4 now a true and correct transcript of my testimony.

5
6 Dated

7
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11
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13 Signed before me this
14 day of , 2005.
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25

1 STATE OF HAWAII)
2)

3 I, DONNA KOHLS, C.S.R., a Notary Public in and for
4 the State of Hawaii, do hereby certify:

5 That on November 14, 2005, at 9:21 a.m., appeared
6 before me TERRY DAW, the witness whose testimony is
7 contained herein, that prior to being examined, the
8 witness was by me duly sworn; that the proceedings were
9 taken in computerized machine shorthand by me and were
10 reduced to print; that the foregoing represents to the
11 best of my ability, a correct transcript of the
12 proceedings had in the foregoing matter;

13 That the witness, if applicable, was notified through
14 counsel, by mail or by telephone to appear and sign; that
15 if the transcript is not signed, either the reading and
16 signing were waived by the witness and all parties, or the
17 witness failed to appear and the original is therefore
18 kept on file without signature pursuant to Court Rules.

19 I further certify that I am not counsel for any of
20 the parties hereto, nor in any way interested in the
21 outcome of the cause named in the caption.

22 Dated:
23

24 Donna Kohls, C.S.R., No. 146
25 Notary Public, State of Hawaii
My commission expires: 7-21-2009

Transcript of the Testimony of
TERRY DAW

2

Date: November 14, 2005

Case No.: 04-00204 DAE KSC

Case: ALOHA SPORTS, INC. v. THE NATIONAL COLLEGIATE

Carnazzo Court Reporting Company, Ltd.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

ALOHA SPORTS INC., a Hawaii)	CIVIL NO. CV04-000204 DAE/KSC
)	
Plaintiff,)	
)	
vs.)	
)	
THE NATIONAL COLLEGIATE)	AFTERNOON SESSION
ATHLETIC ASSOCIATION, an)	VOLUME II
unincorporated association,)	PAGES 121 THROUGH 267
)	
Defendant.)	
)	
)	

VIDEOTAPED DEPOSITION OF TERRY DAW

Taken on behalf of Defendant at the law offices of
McCorriston Miller Mukai MacKinnon LLP, Five Waterfront
Plaza, 4th Floor, 500 Ala Moana Boulevard, Honolulu,
Hawaii 96813, commencing at 1:38 p.m., on Monday, November
14, 2005, pursuant to Notice.

BEFORE:

Donna Kohls, CSR 146
Notary Public, State of Hawaii

1 APPEARANCES:

2 For Plaintiff: DAVID W. KESSELMAN, ESQ.
3 COURTNEY PALKO, ESQ.
4 Blecher & Collins, P.C.
611 W. Sixth Street, 20th Floor
Los Angeles, California 90017-3120

5 and

6 FREDERICK W. ROHLFING, ESQ.
7 Case Bigelow & Lombardi
2600 Mauka Tower
8 737 Bishop Street
Honolulu, Hawaii 96813

9 For Defendant: GREGORY L. CURTNER, ESQ.
10 ATLEEN KAUR, ESQ.
11 Miller Canfield Paddock & Stone, P.L.C.
101 North Main Street, 7th Floor
12 Ann Arbor, Michigan 48104-1400

1 TERRY DAW

2 called as a witness by and on behalf of Defendant, being
3 first duly sworn to tell the truth, the whole truth, and
4 nothing but the truth, was examined and testified as
5 follows:

6 A F T E R N O O N S E S S I O N

7 EXAMINATION (Resumed)

8 BY MR. CURTNER:

9 Q Good afternoon, Mr. Daw. Have you ever been deposed
10 prior to today?

11 A Never.

12 Q Have you ever given testimony under oath in a prior
13 proceeding?

14 A I never have.

15 Q You mentioned this morning that you knew Mr. Rohlfing
16 before you became involved with ASI. How did you know
17 him?

18 A One of my best friends is his brother-in-law and our
19 kids played together because of that. And he also is a
20 member of the same church that I'm a member of. So we had
21 some association there.

22 Q Who is the person, the brother-in-law?

23 A Mark Mockelson (phonetic), one of my best friends.

24 Q How do spell that?

25 A I don't know how to spell his name, to be honest.

1 understanding.

2 THE WITNESS: We consulted legal counsel and he
3 told us he thought we were okay to move.

4 MR. KESSELMAN: Hold on. I don't want you to
5 get into what you discussed with your counsel.

6 THE WITNESS: Okay.

7 MR. KESSELMAN: You can tell him what you may
8 have relayed back to ESPN, but I don't want the sum and
9 substance of your conversation with counsel.

10 THE WITNESS: We relayed back to ESPN,
11 regardless of this, we were going to apply to move the
12 game.

13 Q (By Mr. Curtner) Did you seek ESPN's consent before
14 you made the decision and asked the NCAA for permission?

15 A Their consent, no, we did not.

16 Q I take it you would agree with me that the NCAA was
17 more supportive of your position to move the bowl than
18 ESPN was?

19 A They agreed to do it. So I assumed they were more
20 supportive.

21 Q He goes on to say, we have serious concerns, and I'm
22 paraphrasing, about the continued viability of the Jeep
23 title sponsorship if the move is implemented. And in fact
24 Jeep did withdraw, correct?

25 A They did.

1 was not my business. Their revenue-- I wouldn't know. It
2 would be hard to know.

3 Q He says, "In addition, as you know, there are certain
4 issues with ABC regarding team selection that must be
5 resolved prior to even any discussion." What are those
6 issues? What were those issues?

7 A In our contract with ABC, if I remember correctly,
8 they approved the final selections of the teams in the
9 games, but they couldn't unreasonably withhold their
10 approval.

11 Q So were you planning to change the team selection
12 from what it had been the year prior in Hawaii?

13 A At the time we moved, we were not, no.

14 Q So you had the SEC, the ACC, The Big East and the
15 Pac Ten. And this bowl you were talking about was the
16 Oahu where you had a SEC and the ACC, right?

17 A No, the Big East and the ACC.

18 Q Wasn't the Oahu Bowl Georgia and Virginia?

19 A That was a one year contract because we couldn't get
20 a team out of the other conference.

21 Q But it was in fact the SEC and the ACC?

22 A For one year, yeah. But that was on only as a
23 substitute. The SEC was a substitute conference.

24 Q So the contract for Oahu was the Big East and Pac 10?

25 A I think that's right. And the one for the Aloha was

1 Q That was your contract, right?

2 A That's correct.

3 Q And you showed as an income item for ticket sales
4 1.342 for the schools, right?

5 A That's correct.

6 Q But the way you actually handled that as a matter of
7 cash was, when you settled up with the schools, you
8 deducted from what you were paying them the amount that
9 they were being charged for the tickets?

10 A We did exactly what the contract between us and the
11 schools required.

12 Q But that is in fact the way you did it, correct?

13 A We took all the expenses plus all the money they
14 spent in addition to ticket sales, and they spent more
15 money than just ticket sales, and we deducted that from
16 the amount of money we owed them.

17 Q And you paid the difference?

18 A And we paid the difference.

19 Q At least in this year?

20 A That is how we did it every year.

21 Q Some years you didn't pay at all?

22 A Some years we did not-- some years we did not agree
23 to finish it, that's correct, as in one year.

24 Q Oregon and Wake Forest were never made the full
25 amount that they were contracted to receive, correct?

1 A Then that would have been what they charged.

2 Q Now, why did you charge the five percent King County
3 ticket tax on the tickets that were sold or obligated to
4 be sold by Stanford?

5 A Because that is what the King County ticket tax was.

6 Q But, in fact, you never paid that tax to King County,
7 did you?

8 A No, because there is a question of who was supposed
9 to collect it.

10 Q So you charged the schools for a tax but then you
11 didn't turn it over to the taxing authorities?

12 A We had already paid the tax through to the other
13 side. We were just passing that tax on to Stanford.

14 Q No. In fact, you never made that tax, isn't that
15 true?

16 A That is the claim. But that is not necessarily the
17 case.

18 Q King County says you owe them hundreds of thousands
19 of dollars even today, isn't that true?

20 A They do.

21 Q And they claim that you never made this tax even
22 though you collected it from the schools?

23 A That is what they claim.

24 Q Are you claiming they are wrong?

25 A Yeah. We had an agreement with the ticket agency

1 that was supposed to collect the tax.

2 Q How could the ticket agency collect the tax on the
3 tickets that were being purchased directly from you by
4 Stanford?

5 A There is more than just this involved in the taxes
6 and how they were paid.

7 Q Well, explain it to me. I don't understand.

8 A We sold all kinds of tickets to the game.

9 Q I understand the public tickets or the ticket agency
10 or whoever was selling them would collect the tax. But
11 when you are selling the tickets--

12 A You said to me that we owed a hundred and some
13 thousand dollars in taxes, and I'm telling that you it's
14 not just this amount. It's also involved with the amount
15 of money that was paid by our ticket agency, and they
16 never turned the tax money over to the state.

17 Q I see. Not only did ASI not pay the tax money to
18 King County but the ticket agency also did not pay the
19 taxes to King County. Is that what you are saying?

20 A I'm saying that is what I'm saying, yeah

21 (Exhibit 16 marked for identification.)

22 Q (By Mr. Curtner) Exhibit 16, sir, is another
23 settlement statement, is that right?

24 A It is.

25 Q Who is Mike Finn you are sending this to?

1 they had letters.

2 Q They told you that they had objections from those
3 schools that they hadn't been paid?

4 A No, they didn't even say objections.

5 Q What did they say?

6 A They said that they were decertifying the game. It
7 was about a two-sentence discussion and that they were
8 decertifying it because-- what did they say? They
9 mentioned something about the letter of credit and then
10 they mentioned-- I can't remember exactly what. It's a
11 very, very brief conversation.

12 Q Is it accurate they told you that they were refusing
13 to certify the bowl because of financial irregularities,
14 the letter of credit, and that your application was
15 irregular?

16 A No, they never mentioned my application ever.

17 Q They mentioned the other things but not that?

18 A They mentioned the letter of credit and they
19 mentioned the teams were owed money still. But that is
20 all they mentioned. But at the same time at that
21 certification meeting, they were also given assurances and
22 in fact deposit bank slips indicating the money would be
23 paid. All they had to do was recertify and they would
24 have gotten their money, all of it, and all the things you
25 talked about would have all been paid.

1 and purposes, I will concede that they might have been.

2 Q But it was a sponsor that promoted the name Sheraton?

3 A Yeah, absolutely.

4 Q And even though there was an agency--

5 A I can't remember the name of the agency. But they
6 owned and managed the Sheraton Hotels.

7 Q But then there was also an agreement for the Sheraton
8 Waikiki and the Sheraton Moana Surfrider and the Sheraton
9 Princess Kaiulani to give you rooms at a discount, right?

10 A No, I don't think they gave us rooms at a discount.

11 Q Didn't they pay you a rebate based on the number of
12 rooms that you charged or that you sold to the teams?

13 A Did they pay us a direct rebate, I think we did get
14 some rebate from them.

15 Q About \$30.00 a room?

16 A That could be about right.

17 Q Per night?

18 A That would be probably right, yeah.

19 Q And so it was about a hundred people per team or
20 more?

21 A Not a hundred rooms. The official travel parties
22 were something like 105 or something like that in terms of
23 players in the games.

24 Q And then there were also others who came, school
25 officials, advisers and coaches?

1 A Yeah. How many of those were part of the traveling
2 party I don't know. They also had alumni that came and
3 all kinds of people that came.

4 Q So how many rooms would you typically sell in those
5 days?

6 A I don't know. I don't have-- off the top of my head,
7 I can't tell you.

8 Q But you got a rebate on each and every one that you
9 sold?

10 A We got a rebate on all the rooms that were
11 contractually obligated by the teams to purchase.

12 Q So the teams would pay 135 or 160 or something like
13 that and you would get a rebate of \$30.00?

14 A Uh-huh. They got a very competitive rate on the
15 hotel room, actually.

16 Q And you got an even more competitive rate?

17 A We got a rebate back from the hotel rooms, that's
18 true. I guess we could have got it in the form of a
19 sponsorship. It would have been the same.

20 Q It's all money, right?

21 A That's correct. Some bowl games did it this way.
22 Some bowl games got sponsorships.

23 (Exhibit 20 marked for identification.)

24 Q (By Mr. Curtner) Exhibit 20, Mr. Daw is a letter
25 from Mr. Rohlfing to Mr. Chastain relating to the amount

1 notified that that was a decertification of the game.

2 (Exhibit 22 marked for identification.)

3 Q (By Mr. Curtner) This Exhibit 22 is an Application
4 for Recertification Seattle, corrects?

5 A It looks like it is, yes.

6 Q It's transmitted March 31, 2001, right?

7 A Uh-huh.

8 Q And so you understood that you had to apply to get
9 recertified, correct?

10 A We agree that every single year there is requirements
11 given in the Handbook, one of which was to fill out the
12 application form. And that as long as we were within the
13 requirements of the game, we would be recertified. And if
14 we weren't, there were certain penalties that would be
15 affixed to us.

16 Q Did you help prepare this document?

17 A I'm sure I had some hand in it.

18 Q What was your role?

19 A I would have been reviewing and helping with the
20 document.

21 Q But did you prepare it or did Mr. Rohlfing basically
22 prepare it?

23 A Mr. Rohlfing prepared it.

24 Q Would you look at Item 46 of the application itself.

25 A Okay.

1 that true?

2 A Uh-huh.

3 Q So the NCAA could have refused certification for this
4 year if they had wanted to, correct?

5 A They could have. But it was the practice of the NCAA
6 not to.

7 Q They were trying to help you out, weren't they?

8 MR. KESSELMAN: That calls for speculation as to
9 what they were or were not trying to do.

10 Q (By Mr. Curtner) They extended you every courtesy
11 and every possible extension of time, did they not, to try
12 to keep your bowl going?

13 A Depends on what point in time we are talking about.

14 Q During this point of time.

15 A Did they try to help us, I guess they looked at these
16 rules with some degree of leniency. That was certainly
17 their choice to do that and they did.

18 Q Item No. 55, it says, "Will your bowl pay \$12,000 fee
19 to the NCAA upon notice of certification," and you
20 answered yes. So you see that?

21 A Uh-huh.

22 Q In fact, you didn't do that, did you?

23 A It was paid late, but it was eventually paid.

24 Q It was not paid until the following spring when you
25 submitted the application for recertification for the

1 following year, right?

2 A That's correct.

3 Q So you submitted the '02 certification fee in '03,
4 right?

5 A We would have probably always submitted it in '03,
6 but we-- no, that would be incorrect. The answer to that
7 question is yes.

8 Q So that was another way in which you were not in
9 compliance with the NCAA rules?

10 A Uh-huh. They wrote us saying if we had it in by a
11 certain date, we would be fine, and we did.

12 Q Do you have a letter saying it was okay to submit the
13 \$12,000 in March or April of '03?

14 A I think it was from Nicky Watson, if I remember
15 right.

16 Q Has that been produced?

17 A I don't know if we have it still.

18 Q There is no such letter that I have seen.

19 A Then you want to ask the NCAA if they have it,
20 because they probably do.

21 Q I will. I asked them for everything, too.

22 A We have produced boxes and boxes and boxes of
23 documents. So the fact that one letter would be missing
24 wouldn't surprise me.

25 Q It's your testimony, sir, under oath that Nicky

1 Watson wrote you a letter saying that you could put the
2 '02 certification fee in in '03, is that right?

3 A I didn't say that it was okay. I didn't say that. I
4 said they accepted the money and they took it.

5 Q So you are not now claiming that you have a letter
6 from Nicky Watson that said it was okay?

7 A I'm saying Nicky-- I told you that Nicky Watson sent
8 us a letter telling us that we had to get the money in by
9 a certain date, which we did.

10 Q Even though you concede it was late?

11 A Yes, I do concede it was late.

12 (Discussion held off the record.)

13 (Exhibit 23 marked for identification.)

14 Q (By Mr. Curtner) Exhibit 23, sir, is the Application
15 for Recertification of the San Francisco Bowl, right?

16 A Okay.

17 Q And this is a transmittal of March 31, 2001, right?

18 A That is what it indicates, yes.

19 Q And you participated in the preparation of this?

20 A I think I would have, yeah.

21 Q And it was accurate?

22 A I assume it was accurate, yes.

23 Q Now, it says, "It is our desire to significantly
24 increase the team payouts from the Bowl. In order to
25 accomplish this goal, we believe that the Bowl needs to be

1 Q There's a famous poem: "Standing on the sidelines
2 gnawing on his rectitude."

3 A Are we done with that one?

4 Q But you were aware of that, that that was the
5 position of the NCAA, correct?

6 A I was aware that they sent us that letter.

7 (Exhibit 27 marked for identification.)

8 Q (By Mr. Curtner) This is something from McNeil
9 Wilson Communications to Mr. Rohlfing dated May 10, 2001
10 with some draft press releases. Are you familiar with
11 this or is this something only Mr. Rohlfing knows about?

12 A Well, he was writing lots of this kind of stuff, and
13 quite frankly, this was something that Fritz basically
14 handled with him. I was involved in meetings and general
15 discussions about stuff.

16 Q Patrick Dugan of McNeil Wilson Communications was
17 your publicity person or public relations person?

18 A It was a PR firm that we hired to help us, yeah.

19 Q And, in fact, you never paid him, right?

20 A We paid him some, yeah.

21 Q But you owed him money. In fact, he has a judgment
22 against you?

23 A He does, that's correct.

24 Q For \$30,000 or something like that?

25 A Uh-huh.

1 Q Because you didn't pay him for this work?

2 A That would be correct.

3 Q This indicates that Jeep was withdrawing as a
4 sponsor. That's accurate, right? Jeep did say they
5 didn't want to continue to be a sponsor if you were moving
6 to Seattle?

7 A They told us they didn't want to be a sponsor. And
8 they thought that, since we were moving the game, they
9 didn't have to continue with our sponsor.

10 Q This draft says at the bottom of the page relating to
11 Jeep--

12 A Which page is that?

13 Q It's the second page of the exhibit. "Enhancing the
14 overall sponsorship packages for both games is essential
15 to increasing the bowl payouts and attracting higher
16 ranked teams." Do you see that?

17 A Uh-huh.

18 Q That was your position in May of 2001, correct?

19 A Yeah.

20 Q And the next sentence reads, "In Honolulu, the
21 Christmas Day bowl games failed because the preexisting
22 contracts with the networks and sponsors did not generate
23 enough revenue to draw the higher ranked teams needed to
24 attract Hawaii fans." Do you see that?

25 A That was one of many reasons. But that is what this

1 (Exhibit 29 marked for identification.)

2 Q (By Mr. Curtner) Exhibit 29, Mr. Daw, is a letter
3 dated to Mr. Rohlfing from Michael Tranghese, Commissioner
4 of the Big East, right?

5 A Uh-huh.

6 Q Do you remember meeting with or talking to the Big
7 East about their interest?

8 A Fritz really did the discussions with the Big East.

9 Q This states that, by July of 2001, the Big East was
10 saying that they were concerned about the viability of the
11 relocation of the second game to the West Coast, San
12 Francisco. Do you see that?

13 A Where are you talking? Where are you saying this
14 says this at?

15 Q It says that under the paragraph marked number one.

16 A Yeah.

17 Q So you didn't have the San Francisco Bowl mechanisms
18 together by this point in time, July or the summer of
19 2001, right?

20 A Well, the question I have for you is, what do you
21 mean by didn't have the mechanisms? We are not required
22 to have agreements with any conferences, even before
23 playing--even until the time of the game. In fact, we are
24 never required to have an agreement with the conference.

25 Q But they say they are concerned about the viability

1 of the relocation. In other words, you didn't have an
2 agreement with the park. You didn't a variety of things
3 in place, right?

4 A It doesn't say this.

5 Q But you didn't have an agreement with the park at
6 that point, right?

7 A No, we didn't.

8 Q And you didn't have an agreement--

9 A We could have had one.

10 Q You didn't have an agreement with staff to work on
11 it, isn't that right?

12 A We had our own staff.

13 Q Just your Hawaii staff?

14 A No. We probably would have run the same staff we ran
15 the Seattle bowl with.

16 Q And you didn't have the commitment from any
17 conference, right? You had interest but no commitment?

18 A No, we didn't. It's not required, but we didn't have
19 it.

20 Q My question is, would you have it? And you were
21 having a dispute with ESPN and ABC, right?

22 A I don't know if there was still a dispute at this
23 point or not. There may not have been at this point.

24 Q At some point in the summer, you started considering
25 other cities besides San Francisco, right?

1 A Uh-huh.

2 Q You considered Anaheim and Jacksonville, right?

3 A No.

4 Q Anaheim and--

5 A Columbia, South Carolina.

6 Q Any others?

7 A We looked at a lot of cities.

8 Q Why were you looking at cities other than San
9 Francisco?

10 A Because we were trying to locate the game closer to
11 what we thought was going to attractive football markets
12 before we committed to it. We were still committed to San
13 Francisco at the time. We were just trying to decide
14 whether not we get a better offer elsewhere, whether or
15 not we could increase our chance of success in another
16 city. And we knew if we did this, we would have to apply
17 for recertification or from a move the NCAA, none of which
18 we did.

19 But we were just exploring other business
20 opportunities. If they would present themselves and
21 things were favorable enough, we would have gone to the
22 NCAA and said, "Here is what we want to do. What do you
23 think?" But that ever occurred.

24 Q So even by August of 2001, you hadn't settled on a
25 location or teams or TV sponsors--

1 A No. While this was still going on, we were still
2 working on the game and whether it was going to be held in
3 San Francisco or not. We were still working on the game.

4 Q But you were shopping it around, right?

5 A We were shopping it around. We were shopping an
6 opportunity that we thought some city may be interested in
7 helping us more than San Francisco would

8 (Exhibit 30 marked for identification.)

9 Q (By Mr. Curtner) This exhibit 30 is an article from
10 the Honolulu Advertiser of August 8, 2001. You were
11 familiar with this at the time?

12 A I don't know if I read this article or not. I
13 probably did, yeah.

14 Q "Honolulu, San Francisco, Columbia, Anaheim, Azusa,
15 Cucamonga," he says. "At this point, it's anybody's guess
16 where it might wind up." Was that accurate?

17 A No, it's inaccurate completely.

18 Q You weren't considering Azusa and Cucamonga--

19 A I don't consider Fred Lewis, a staff columnist for
20 the Honolulu Advertiser, as an authority on our game or
21 what we were doing.

22 Q That is why I'm asking, sir, whether it's accurate.

23 A I told you it wasn't.

24 Q But you were considering Columbia, Anaheim or any
25 city that would take it?

1 Fritz Rohlfing in his September 9 letter and updated
2 information provided by William during his in-person
3 presentation were considered." Does this help you
4 remember who William Hevenor was?

5 A Someone that Fritz knew, but I'm not really sure who
6 he is.

7 Q Do you know anything about the person?

8 A No.

9 Q And this says, "After carefully reviewing the matter,
10 the NCAA Football Certification Subcommittee determined
11 that adequate arrangements and commitments had not been
12 made by those involved to ensure the proposed bowl would
13 be a quality product and experience for the
14 students-athletes that would participate in the game. For
15 these reasons, the subcommittee has withdrawn
16 recertification of the San Francisco Bowl for the 2001-02
17 bowl season." Do you see that?

18 A I do.

19 Q And you understood that to be the NCAA's position in
20 September of '01, correct?

21 A We did.

22 Q And you then had some subsequent conversations with
23 NCAA representatives after this, right?

24 A Yeah, basically, because there is no provision for
25 them to decertify a game that has been certified.

1 was moved to San Francisco and then not held but you
2 reapplied in April of 2002 to move it back to Honolulu,
3 that you agreed in your application that you had not
4 complied with the NCAA rules and regulations relating to
5 ticket sales the last time that bowl had been held?

6 A That is a lot in one mouthful. Repeat that one more
7 time.

8 Q Let's try and save time.

9 A I'm trying to understand your question.

10 Q In other words, it was some of the questions I asked
11 earlier about some of the other applications for
12 recertification that you admitted that you hadn't complied
13 with all the ticket rules?

14 A I guess my testimony would stand on that.

15 Q And that was true of the application for moving it
16 back to Hawaii that you submitted in April of 2002? I'll
17 show it to you. I don't mean to be cute with you, sir.

18 A I'm not trying to be cute.

19 Q I'm just trying to do it fast.

20 (Exhibit 39 marked for identification.)

21 Q (By Mr. Curtner) Exhibit 39 is the Application for
22 Recertification, correct?

23 A Yes.

24 Q What does the word recertification mean to you, sir?

25 A Well, that would be defined by the NCAA Handbook.

1 Q April 1, 2002 was the date of it, correct?

2 A Well, I assume so.

3 Q And at that point in time, you had no commitments
4 from TV, correct, to televise the game.

5 A No, we did not.

6 Q And at that point, you had no title sponsor, correct?

7 A Correct.

8 Q At that point, you had no subsidiary corporate
9 sponsors, correct?

10 A Correct.

11 Q At that point, you had no commitments with
12 conferences?

13 A We had tentative commitments, yes.

14 Q You had discussions but no commitments, correct?

15 A We had commitments if certain things happened, yes.

16 Q In other words, the Pac 10 said we might be
17 interested if you have a game that we should be interested
18 in, right?

19 A It wasn't the Pac 10.

20 Q It was the WAC and who else?

21 A The WAC, in particular, said basically that if in
22 fact they don't recertify-- if they don't certify the ESPN
23 Bowl, we would like to participate in the game.

24 Q So they said we are going to go with whoever gets the
25 certification, right?

1 A That is basically what they said.

2 Q And you had no commitment with the stadium, either,
3 correct?

4 A No formal commitment, no.

5 Q They said we will give it to whoever gets certified,
6 right?

7 A That's basically it, yeah.

8 Q And you admitted in your application that you had not
9 averaged 25,000 tickets or 50 percent?

10 A There is an explanation, but yes.

11 Q And you also admitted that you had not sold a number
12 of tickets equal in value to the combined contractual
13 obligations of the teams, right, in the last year that you
14 had held it?

15 A If you refer to something.

16 Q I'm looking at 46 and 47.

17 A That is correct, because we were not able to do
18 that. It was a limited number of tickets and we couldn't
19 sell enough tickets to equal that amount. It would be
20 impossible.

21 Q But in fact you had not complied with the rules?

22 A I don't know if we complied or not. I would have to
23 take some interpretation of what they decided that meant.

24 Q Question No. 45 says, "Was your game held in the
25 academic year for which it was certified," and you

1 MR. KESSELMAN: I just want to inform you that
2 Mr. Daw advised that his last flight out is at 7:00. He
3 has to leave here no later than 6:00.

4 MR. CURTNER: Well, I expect to quit by then.
5 But it's not my obligation. You guys were late this
6 morning.

7 MR. KESSELMAN: I'm just advising you. We can
8 discuss logistics afterwards if you don't finish.

9 Q (By Mr. Curtner) Is it accurate, Mr. Daw, that you
10 entered into a settlement agreement with ESPN whereby ESPN
11 would pay part of the money that it was agreeing to pay to
12 you for the Seattle Bowl to ABC to discharge an obligation
13 of ASI to ABC?

14 A Absolutely accurate.

15 Q Is it also accurate that part of that was to be paid
16 out of the '03 Seattle Bowl revenues from ESPN which never
17 took place?

18 A That is also accurate.

19 Q And so ASI still owns money to ABC?

20 A That is also accurate.

21 Q How much?

22 A I think 190,000, something like that.

23 Q Is it accurate, sir, that there were three people,
24 three different groups, trying to get a bowl game back in
25 Hawaii for the '02-'03 year at the end of '02 football

1 season?

2 A I think that is accurate, yes.

3 Q And your group was one of them. The others were ESPN
4 and Global Event Management, GEM, which runs the Motor
5 City Bowl?

6 A Correct.

7 Q Was it accurate that the ESPN group was tied in with
8 the Western Athletic Conference and Conference USA?

9 A That's accurate.

10 Q Is it accurate that you told the Star-Bulletin that
11 your group was in negotiations with major conferences?

12 A We were.

13 Q But you did not have an agreement with the stadium,
14 correct?

15 A Not a written agreement, no.

16 Q But they said that if you were lucky enough to get
17 it, they would probably go with you, is that right?

18 A Yeah.

19 Q And you did not have an agreement with a network?

20 MR. KESSELMAN: Has this not been asked and
21 answered several times?

22 MR. CURTNER: Yes. I'm just trying to make sure.

23 THE WITNESS: No, we didn't at this time.

24 Q (By Mr. Curtner) The newspaper quotes you to
25 contrary, that is why I'm asking, whether they misquoted

1 of the million?

2 A Uh-huh. A hundred thousand was going to go to--

3 Q The sellers?

4 A The sellers.

5 Q But you didn't have that in writing?

6 A I think that is in writing.

7 Q You don't have a copy of such a writing?

8 A I do not.

9 Q Nor do I.

10 A That could be. But most of those letters were sent
11 directly-- we had them faxed directly to Paul Feller,
12 because that is what he wanted.

13 Q Was the contract with Pro Sports ever signed by Mr.
14 Feller?

15 A Let me tell you what I was told. Okay. I was-- when
16 we signed our agreement, we faxed it to the hotel where
17 the subcommittee was meeting. Paul Feller had his
18 secretary fax me back his agreement. At the time, my fax
19 machine jammed and the meeting went on. And by the time I
20 got back to Paul, he told me that they it had been
21 decertified and there was no deal.

22 Q So you never had a signed copy?

23 A I had a verbal agreement and I had a signed copy that
24 was sent. I never received it because of an electronic
25 error.

1 Q You never actually saw it?

2 A Never did.

3 Q And the one that was produced to us is not signed by
4 Mr. Feller?

5 A No. But I think Mr. Feller in his interview with the
6 NCAA indicated that he had a deal with me. In fact, I'm
7 pretty sure of that.

8 Q You weren't there, so you don't know what was said?

9 A Only what Mr. Feller told me and Mr. Haugh.

10 (Exhibit 44 marked for identification.)

11 Q (By Mr. Curtner) This is the proposed agreement
12 which Pro Sports entered, right?

13 A Yeah.

14 Q And this is one that you never saw a signed copy of?

15 A Uh-huh.

16 Q Would you look at page seven and eight.

17 A Uh-huh.

18 Q Maybe it's seven, eight-- I guess it's seven and
19 eight. There is two groups of liabilities and that is
20 what I'm a little confused about. Can you explain that.
21 Is one the parent company and one the subsidiary?

22 A Yeah, probably.

23 Q So Exhibit-- page six is liabilities at the parent
24 company level, assets and liabilities, is that right?

25 A Yeah, probably. I would say yes.

1 actually, but I think it was Phoenix.

2 Q So Mr. Feller was in Phoenix but his secretary was in
3 Southern California?

4 A Santa Barbara.

5 (Exhibit 45 marked for identification.)

6 Q (By Mr. Curtner) Mr. Daw, Exhibit 45 is the NCAA
7 News Release dated Thursday, May 1, 2003, indicating that,
8 among other things, the committee did not recertify the
9 Seattle Bowl due to financial issues and failure to adhere
10 to administrative requirements. Do you see that?

11 A Uh-huh.

12 Q Is that the same thing they told you over the
13 telephone?

14 A Yeah, I would say, in essence, that is what they told
15 me.

16 Q Is this the only writing that you got from the NCAA?

17 A I didn't get this from the NCAA.

18 Q Did you see this at the time?

19 A We read a release in the paper the next day.

20 Q That said this same information?

21 A You know, I don't remember. Something to this effect,
22 yeah.

23 Q Did you see any other writing from the NCAA on this
24 subject?

25 A No.

1 I, TERRY DAW, do hereby certify that I have read the
2 foregoing typewritten pages 1 through 265, inclusive, and
3 corrections, if any, were noted by me; and that same is
4 now a true and correct transcript of my testimony.

5
6 Dated

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13 Signed before me this
14 day of , 2005.
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1 STATE OF HAWAII)
2)

3 I, DONNA KOHLS, C.S.R., a Notary Public in and for
4 the State of Hawaii, do hereby certify:

5 That on November 14, 2005 at 1:38 p.m., appeared
6 before me TERRY DAW, the witness whose testimony is
7 contained herein, that prior to being examined, the
8 witness was by me duly sworn; that the proceedings were
9 taken in computerized machine shorthand by me and were
10 reduced to print; that the foregoing represents to the
11 best of my ability, a correct transcript of the
12 proceedings had in the foregoing matter;

13 That the witness, if applicable, was notified through
14 counsel, by mail or by telephone to appear and sign; that
15 if the transcript is not signed, either the reading and
16 signing were waived by the witness and all parties, or the
17 witness failed to appear and the original is therefore
18 kept on file without signature pursuant to Court Rules.

19 I further certify that I am not counsel for any of
20 the parties hereto, nor in any way interested in the
21 outcome of the cause named in the caption.

22 Dated:

23 Donna Kohls, C.S.R., No. 146
24 Notary Public, State of Hawaii
25 My commission expires: 7-21-2009